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Pro Aris & Focis:

OR A

VINDICATION of the PROCEEDINGS

OF THE

COMMONS

ON THE

*Writs of Habeas Corpus and Writ of Error in the
Case of the Aylesbury Men.*

In a LETTER from a Member of Parliament to a Friend
in the Country.

The Third Edition.

S I R,

YOURS of the 19th came safe to my Hands, wherein you are pleas'd to Inform me, that great Objections are made by some Persons against the Proceedings of the Commons on the late *Writs of Habeas Corpus and Writs of Error*, Su'd for on Behalf of the *Aylesbury Men*, who were Committed for a Contempt to, and a Breach of the Privilege of the House of Commons; and you are pleas'd to desire that I should send you an Account of the Reasons that Induc'd the Commons to pass such Votes and Resolutions as they have done on those Occasions: In Answer to which, I must beg Leave to remind you, that the Commons have Order'd the Proceedings in Relation to the *Aylesbury Men*, Committed by that House, and the Reports of the Lords Journal, and Reports of the Conferences, and of the free Conference, to be Printed; which I hope you will receive by the Carrier about the 30th Day of this Month; In the mean time, I would only desire you to Ask those Gentlemen, Whether they would be Contented that a Person Committed in Execution for a Debt of One thousand Pounds due to any of them, should be Discharg'd by a Writ of *Habeas Corpus*? If not, Whether the Privileges of the House of Commons are not more Valuable, on which depend the Antient Fundamental Liberties of the Kingdom? And if they are, Whether they would think it Reasonable, or consistent with the Constitution, that Persons Committed for a Contempt to, and a Breach of the Privilege of that August Assembly, should be Discharg'd by any other Authority, in Contradiction to their Judgment, and without the least Application or Submission to them; that is, in short, Whether they are desirous that the Commitments, and consequently the Privileges of the Commons should be Defeated, and thereby the Authority of that House render'd Precarious and Dependent on the L---ds, and by Consequence Unable to Preserve the Liberties of the People?

Where Persons are Committed in order to a Tryal, they ought by Law to be brought to such Tryal, in a Reasonable time, or else to be Bail'd or Discharg'd on a Writ of *Habeas Corpus*. But where they are not Committed in Order to a Tryal, but in Execution of a Sentence or Judgment legally pass'd upon them, There no Person ever was, or can be Discharg'd on any such Writ; and since an *Habeas Corpus* will not Discharge a Person in Case of a Contempt to any Inferior Court in *Westminster-Hall*; much less on a Contempt to the High Court of Parliament; Such a Proceeding would not Preserve but Destroy Liberty; by

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Encour

Encouraging Offenders to break in upon the Constitution, and pull down the Fences and Bulwark of all our Liberties.

If Gentlemen are in Earnest for Preserving the Liberty of the Subject, they must Endeavour to preserve that Constitution that hath hitherto preserv'd it; and that can never be done without maintaining the Authority of the H---se of C---ns, with whom are entrusted the Rights and Liberties of all the Commons of England: And

Are not the House of Commons as much to be trusted with the Liberty of an Offender as a single Judge? Are not they Entrusted with all our Rights and Privileges? Are not they a Part of the High Court of Parliament? Are not they by the Law of Parliament, Sole Judges of their own Privileges, Exclusive of the Lords Themselves? And shall the Inferior Courts be Admitted to Controul their Judgments? Will the People rather choose to Trust their Liberties in the Hands of Persons that are not Chosen by them, than on Those that are? If they do desire to destroy the Constitution, under the Specious Pretence of preserving Liberty, they may Choose other Representatives if they think fit; for I shall never Sell my Country at the Price of an Election, nor make such a False Step as can never be Retriev'd; but render my Name and Family Odious to all Posterity.

The Question arising upon the *Writ of Error* is no other in Plain English, than as a Worthy Member observ'd in the House; Whether the H---se of C---ns have any Privileges secured to them, or not? And, Whether the People of England are from hence forth to remain *Free Men or Slaves*? If the L---ds have a way to bring one Privilege to their Determination, they may by the same Method Determine all the rest; and take away all; and

If a *Writ of Error* will lie on every *Habeas Corpus*, and such like Interlocutory Orders, then all the Executive Authority of the Law, which is Delegated from the Crown to Judges and other Publick Officers (who are Sworn to do Justice, and are Answerable for a Breach of their Duty) and which is Regulated by the known Laws and Statutes of the Realm, will be put into the Hands of the L---ds, to be Executed without Controul, at their Will and Pleasure; and no man can say his Life, his Estate, or his Liberty is Secure. All the good Laws from *Magna Charta* to this Day, which have been obtain'd by the Commons at the Expence of so many Millions of Money, will be made precarious on the Judgment of the L---ds; Nay even the Prerogatives of the Crown, as well as the Rights of the People, will all be Swallow'd up (as the Commons have observ'd) in the Bottomless Gulph of their L---ds's Judicature.

We were told at the Free Conference by a Reverend Prelate, That the Constitution of the Government of this Kingdom was the Glory and Happiness of this Nation, and the Wonder or Envy of all the World; but if all Manner of Orders of Inferior Judges, who are Ty'd up to the Laws, can be Removed by *Writ of Error* into the H---se of P---rs, to be determin'd, with the Doors shut, by Majority of Votes, where no Man can tell who it is that Hurts him; our Constitution would be the Scorn and Contempt of all Mankind; For that would be to Shift the Executive Power out of the Crown, where it is Limited by Law, into the H---se of P---rs, whom no Law can Controul; and thereby to Establish an Aristocratical Power, independent on the Prince, and even Superior to the highest Prerogatives of the Crown.

There is a great Difference between a *Writ of Error* from one Court to another in *Westminster-Hall*, upon a Special Verdict, a Solemn Judgment, or Demurrer, where there is a Plaintiff and Defendant, and all Regular Steps are taken; and a *Writ of Error* into Parliament upon an Interlocutory Order *ex Parte*, where there is no Verdict, no Demurrer, no Defendant nor any final Judgment: In the former Case a *Writ of Error* may be a *Writ of Right*, but in the latter it would be a *Writ of Wrong*; For it would Deprive the Subject of the Security of the Law, and render their Liberties Precarious on a Vote. Difficult Cases where the Law is doubtful, affect but few, but all the Nation depends on the Security of the Establish'd Law, in Ordinary Cases; and altho' the Constitution should direct us to Cast Lots for our Estates, in doubtful, yet that Method would be very pernicious in other Cases.

The L---ds have ever been denied, and they never openly claimed a Jurisdiction in Original Causes; but for what reason? Was it not because the Constitution would never endure a Power to deprive the Commons of the Security of Juries and known Laws, and to subject their Lives and Liberties to the Immediate Determination of an Arbitrary Vote? But if all sorts of Judgments in all manner of Causes,

and all Orders of Judges, may be Remov'd by Writ of Error into the H---se of P---rs; the L---ds will have as much Power over the Lives, Estates, and Liberties of the People, as they could possibly have by a Jurisdiction in Original Causes.

If a Writ of Error in these Cases be a *Writ of Grace*, we have some Security for our Rights and Liberties, that no Cause shall be brought into the H---se of P---rs that strikes at the Fundamentals of the Constitution or the Privileges of the Commons; The Queen in such Case will be able to preserve Her own Prerogatives, and the Rights of the People; but if a *Writ of Error* be a *Writ of Right* in all Cases, then observe the necessary Consequences, and Name any one Prerogative of the *Crown*, or Privilege of the *People*, that will not be Dependant on the Will and Pleasure of the L---ds. As for Instance,

The Members of the H---se of C---ns have Freedom of Speech within their own House; but suppose an Action of *Scandalum Magnatum* be brought for Words Spoken there against a Noble P---r? The Judges in *Westminster-Hall* Declare the Action does not Lie, a Writ of Error is brought; the L---ds Determine it does Lie? And their L---ps Distinguish and Agree that the C---ns have Liberty of Speech against one another, when they Speak to the Purpose, and with Decency; but not to Reflect on a Noble P---r; so the L---ds are our Judges when we Speak as we ought, and *there is an End of Liberty of Speech*.

Let us then suppose that Ship Money should be set up again, and Subjects refuse to pay, a Distress is taken, an Avowry made, the Judges give Judgment against the Avowry, and that the Distress was not legally taken; A Writ of Error is brought, and the L---ds happen to Adjudge to the Contrary; Is not here a new Tax Rais'd without Authority of Parliament? And yet if a *Writ of Error* in the Case of the *Aylesbury Men* be Allow'd and Establish'd as a *Precedent*, this Tax might be Rais'd by the Authority of Law, that is, *By the Judgment of a Court of Judicature, from whence there lies no Appeal*.

Again, here is Four Millions given by Act of Parliament, for Carrying on a Vigorous War against *France* and *Spain*, the Subjects refuse to pay; a Distress is taken, an Avowry made, and it is Adjudg'd in *Westminster-Hall*, that the Avowry is good, and the Distress well taken; a Writ of Error is brought, and the L---ds happen to Adjudge against the Avowry and Distress; *There is an End of the War, and the French may bring over the Young Gentleman of St. Germans, when they please*.

But these, you'll say, are Extravagant Instances, for the L---ds will always do Right; but as the Learned Mr. P---y told them at the Conference, *As they may do Right, so They may do Wrong*; and if those that had the Power would always do Right, *Arbitrary Power* would be the best Government in the World; because that would be exactly fitted to all Cases, if Right were sure to be done.

The C---ns being Entrusted with the Liberties of their Country, have no power to Act upon Suppositions, or to give up that Authority they are entrusted to Preserve; if the People have a mind to be Slaves, they must chuse Members for that Purpose; and yet I question whether *Oliver* himself, if he had been made a P---r, could have pick'd up a H---se of C---ns in the whole Kingdom, that would allow such a *Writ of Error*, as in the Case of the *Aylesbury Men*.

Every *Englishman* thinks himself Safe, if he can live within the Compass of the Law; but no man knows what Compass the H---se of L---ds will take, nor how to live within that Compass; What Law, or what Authority can Controul their Judgment? If you Appeal to the whole Legislature, they have a Negative Vote; If you Appeal to your Representatives, they can only Assist with a Protestation; and if their Authority is weakned by the *Vox Populi*, you have no Remedy at all; but your Life, your Liberty, and your Property are all held at Will; there is an End of *Littleton's Tenures*: No man can be said to be Tenant in Fee, in Tail, for Life, or for Years; but Tenant by the Courtesy of the L---ds: This, Sir, is Truth; Never did *Englishmen* Court Slavery before; It was a *Rump Parliament* that Voted the L---ds Useless formerly, and there is now a *Rump Party* that is encouraging the L---ds, to Render the C---ns Useless.

The Statute of *Magna Charta* says, *Nulli Vendemus, Nulli negabimus aut differemus Justitiam*; That is, as Lord Coke Interprets in his first Institutes, p. 56. *The King who in Judgment of Law is Present in all his Courts, even in the High Court of Parliament, Declares, That every Subject may take his Remedy for any Injury by due Course of Law, and have Justice and Right done him without Sale, without Denial, and without Delay; The Law shall not be disturb'd or delayed by any Order, Writ, Message, Letters, or other Command, tho' under the Privy Seal or Great Seal.* All Protections that are not in the Register, or Warranted by Law are against this Statute; but he does not say one word

word of a *Writ of Error* to the H---se of P---rs; much less in a Case of this Nature, which was never attempted before, and which would give the greatest Disturbance of all.

This is a Great and Good Act for the Subject; but it was made to Preserve, not Destroy the Law; It was a Declaration of our Antient Liberties, and Constitution. But was it our Antient Constitution, that all Interlocutory Orders of the Courts of Justice might be remov'd into the H---se of P---rs; and that our Lives, Estates, and Liberties might be Determin'd without Jury or Appeal by a Majority of Votes? No, it was so far to the Contrary, that at the Time of the making of this Statute, and long after, the L---ds claim'd no other Judicature, but what the Prince appointed, or what they Enjoy'd as a Part of the Legislature.

The last Appeal in those days was to the whole Legislature, as in most other Governments in the World; for *they that pass the last Judgment without Appeal, have in Effect the whole Legislature*, the Sovereign Judicature of the Realm is by *Bills of Judicature*, in which the L---ds Claim'd the Preference in this Respect, that as Money Bills did Commence with the Commons, so the Bills of Judicature should Commence in the H---se of P---rs. But these Bills as all others were sent down to the Commons, and having their Assent, had the Royal Sanction. This is the Judicature of the High Court of Parliament, which consists of *Queen, Lords and Commons*, and this is agreeable to reason, and consistent with our Constitution; but to say that any one Part of the Legislature hath the Authority of the Whole, is to Establish Contradictions, Destroy our Constitution, and make us all Slaves.

It is true there are several Precedents in Parliament, and some in Book Cases, which prove that an Inferior sort of Judicature has been exercised by the L---ds on Writs of Error, in which it was not thought fit to Trouble the Whole Legislature; but even that Judicature was not Exercis'd at first by all the L---ds, but only by such as the King was pleas'd to appoint; and for this see Book Case of 22 *Ed. iii. N. 3. A. B.* and the Parliament-Roll 25 *Ed. 3. N. 4.* But at last the L---ds got themselves all Appointed, and that false Step has brought these Inconveniences upon us, and so many Advances upon the Liberties of the People; to the farther Progress whereof if the Commons do not make a Stand in due time, it may be too late to Retrieve it.

Men may say what they please of the Power of the Commons, but it is a Wonder to all Rational Men, how they ever suffer'd so many Advances in Prejudice to our Constitution. The L---ds at first claim'd only a Judicature on Writs of Error on Difficult Cases, and on a Final Judgment, after the Law had taken its Course in *Westminster-Hall*; and never pretended till of later years to hear Appeals out of *Chancery*; And at first they were Modest and would receive no Appeals, till the Cause was Heard a second time in *Chancery* on a Bill of Review; but afterwards they received Appeals on the first Sentence, and would not stay for a Review; But then the Decree was to be Sign'd and Enroll'd in *Chancery*; Now they receive Appeals from a Sentence, in Paper, and Interlocutory Orders: And the Commons having let these Things pass, they are further Enlarging their Judicature to Orders at Common Law; whereby, not only the Privileges of the Commons, but the whole Executive Authority will be put into a New Form of Administration, unknown to our Ancestors; where, I doubt, we shall find more Difficulty to get a Regulation by New Laws, than we did before; as it's more Difficult to Deal with many Governours than with any One.

And now what can we say of that Degenerated and Corrupted Part of the Nation, who are so Blinded with *Ambition* and *Faction*, that they will not see their own Ruin, tho' it be Entering in at their very Doors; That cry out for Liberty and Property, and at the same time are Cancelling and Defeating all the Laws and Statutes that have ever been made for the Security thereof! What can we say but that God has given us up for our Sins, and made these Men the Executioners of his Vengeance.

Quos Perdere vult Jupiter, prius dementat.

But since there is Mercy in Heaven, as well as Justice; let us all Apply to, and Prostrate our selves at the Throne of Grace, that if possible, this Evil may be Remov'd from us; That the Cloud of Darkness and Confusion that hangs over our Heads, may be dispers'd and scatter'd; That whilst Her Majesty's Arms are Victorious abroad, She may not be Disturb'd at Home by Civil Dissentions, nor the People be Depriv'd of the Liberties of *England*, whilst they are freely Contributing so many Millions of Money, to Secure and Preserve the Liberties of *Europe*.

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